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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10

11 UNITED STATES OF AMERICA,	)	No. CR-07 - 355 WHA
	)	
12 Plaintiff,	)	<b>DEFENDANT'S SENTENCING</b>
	)	<b>MEMORANDUM</b>
13 vs.	)	
	)	
14 MICHAEL MINAHEN,	)	
	)	
15 Defendant.	)	
	)	

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17 The defendant asks this Court to sentence his in conformance with the Fed. R. Crim. P.  
18 11(c)(1)(C) agreement in this case, to wit 86 ½ months in custody. This sentence in the middle  
19 of the guidelines for an Offense level 21, Criminal History Category VI, and is a fair sentence  
20 considering the facts of this case.

21 Mr. Minahen is a 45 year old man who suffers from Post Traumatic Stress Disorder  
22 arising from both his military service and the deaths of his wife and child, and who has struggled  
23 with drug abuse virtually his entire life. This Court, having sentenced Mr. Minahen on his prior  
24 case, is certainly aware of the facts relating to his background, and knows that his drug abuse has  
25 caused him to violate the law on a number of prior occasions. Until his bank robbery conviction  
26 in 2002, however, Mr. Minahen had never been convicted of a violent offense, and even then the

1 bank robbery “did not involve violence.” PSR at par. 55. He now stands before the Court to be  
2 sentenced on new bank robberies, and obviously will receive a significant sentence.

3 What this court may wish to consider in mitigation here is that Mr. Minahen was on the  
4 right road after he got out of prison this last time. From January 2007 until March 21, 2007, he  
5 was gainfully employed as a driver and manager at Trans Metro Express, and was making a good  
6 living. For reasons unclear, his employer discovered that he had been convicted of a prior federal  
7 offense, and he was immediately terminated. Mr. Minahen became depressed over losing his job,  
8 reverted to drug use, and robbed the banks at issue in this case to pay for his drug usage.

9 Although Mr. Minahen has no memory of having threatened the bank tellers in the banks  
10 he robbed, he wants the Court to know that he meant them no harm and was not armed during the  
11 offenses. Fortunately, one of the tellers reported that she suffered only some anxiety as a result  
12 of the robbery and the other reported no ill effects at all. PSR at par. 11. Again, although bank  
13 robbery is by its nature considered to be a violent offense, these robberies were not committed in  
14 a violent fashion by Mr. Minahen.

15 Both parties signed a plea agreement which failed to take into consideration the guideline  
16 enhancement for making an express threat of death. Mr. Minahen asks the Court to disregard  
17 that enhancement in this case. As a general matter, it has never been clear to undersigned  
18 counsel why this enhancement should apply in bank robbery cases – the crime requires that  
19 money be taken from a teller by force, fear or intimidation, which virtually always will involve  
20 some kind of threat. Where, as here, the defendant is unarmed and never placed the tellers in  
21 actual danger, the enhancement does not seem particularly relevant; in fact, the parties to this  
22 matter did not even consider that enhancement when negotiating the plea agreement.

23 Just as importantly, Mr. Minahen is looking at over 87 months in prison even without the  
24 enhancement. This is a very long and substantial sentence, and it hardly seems necessary to  
25 renegotiate the plea just to add the five months recommended by the Probation Officer.

26 As the Probation Report indicates, this is a very complex case and it is truly sad that M.r

1 Minahen, who looked like he was heading for a new life, lost his job because of his record and  
2 found himself back where he started. Nonetheless, a sentence of 87 ½ months is sufficient under  
3 all of the factors contained in 18 U.S.C. § 3553(a), and Mr. Minahen asks that the Court impose  
4 that sentence in this case.

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6 Dated: September 5, 2007

7 Respectfully submitted,

8 BARRY J. PORTMAN  
9 Federal Public Defender

10 /s/

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